

APPEAL NO. 040958
FILED JUNE 15, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 10, 2004. The hearing officer determined that the respondent (claimant) sustained a compensable injury on _____, because the appellant (self-insured) failed to timely dispute this claim; that the claimant did not timely file a claim for compensation with the Texas Workers' Compensation Commission (Commission) within one year and does not have good cause for failure to do so, however, the self-insured is not relieved of liability for this claim because the self-insured waived its right to contest compensability of this claim; that the claimant had disability from July 8, 2003, through January 4, 2004; that the self-insured did waive its right to contest compensability in accordance with Section 409.021; and that the claimant is not barred from pursuing workers' compensation benefits because of an election to receive benefits under a group health insurance plan. The self-insured appeals, contending that the hearing officer's decision is not supported by the law and is against the great weight of the evidence. The claimant responded, urging affirmance.

DECISION

Affirmed.

We conclude that the hearing officer did not err in determining that the claimant sustained a compensable injury on _____, because the self-insured waived its right to contest compensability of the injury by not timely contesting the injury in accordance with Section 409.021. The hearing officer found, and the self-insured has not appealed, that the self-insured did not dispute this claim within seven days after it first received written notice of the injury. As such, the hearing officer properly determined that the self-insured waived its right to contest compensability, and that the claimant sustained a compensable injury as a matter of law. See Continental Casualty Company v. Downs, 81 S.W.3d 803 (Tex. 2002). Given our affirmance of the waiver determination, we similarly affirm the hearing officer's election-of-remedies determination. Texas Workers' Compensation Commission Appeal No. 030793-s, decided May 16, 2003.

We likewise conclude that the hearing officer did not err in determining that the self-insured is not relieved of liability under Section 409.004 because of the claimant's failure to timely file a claim for compensation within one year of the injury as required by Section 409.003. Although the claimant did not timely file his claim for compensation, that does not relieve the self-insured of liability under the facts of this case because in Texas Workers' Compensation Commission Appeal No. 022091-s, decided October 7, 2002, the Appeals Panel held that when a carrier loses its right to contest compensability, that includes its right to assert a defense under Section 409.004 based upon the claimant's failure to timely file a claim for compensation.

The hearing officer determined that the claimant did have disability as a result of his compensable injury from July 8, 2003, through January 4, 2004. Whether or not the claimant had disability, and for what period of time, presented a question of fact for the hearing officer to resolve. We conclude that the hearing officer's determination on the disability issue is supported by sufficient evidence and that it is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **(a certified self-insured)** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Daniel R. Barry
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Margaret L. Turner
Appeals Judge